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18
19 UNITED STATES DISTRICT COURT
20
21 CENTRAL DISTRICT OF CALIFORNIA
22
23 SOUTHERN DIVISION

24 In re BANC OF CALIFORNIA
25 SECURITIES LITIGATION

26 } No. SACV 17-00118 AG (DFMx)
27 } consolidated with
28 } SACV 17-00138 AG (DFMx)

1 This Document Relates To:

2 CLASS ACTION

3 ALL ACTIONS.

4 } DECLARATION OF MATTHEW I.
5 } ALPERT IN SUPPORT OF LEAD
6 } PLAINTIFF'S MOTION FOR FINAL
7 } APPROVAL OF CLASS ACTION
8 } SETTLEMENT AND PLAN OF
9 } ALLOCATION OF SETTLEMENT
10 } PROCEEDS AND LEAD COUNSEL'S
11 } MOTION FOR AN AWARD OF
12 } ATTORNEYS' FEES AND EXPENSES
13 } AND REIMBURSEMENT OF LEAD
14 } PLAINTIFF'S TIME PURSUANT TO
15 } 15 U.S.C. §78u-4(a)(4)

16 DATE: March 16, 2020

17 TIME: 10:00 a.m.

18 CTRM: 10D

19 JUDGE: Hon. Andrew J. Guilford

1 TABLE OF CONTENTS

	Page
I. PRELIMINARY STATEMENT.....	1
II. THE LITIGATION	9
A. The Commencement of the Litigation	9
B. Defendants' Motions to Dismiss.....	10
C. Defendants' §1292(b) Motion.....	11
D. Rule 26(f) Joint Case Management Report.....	12
E. Confidentiality and Protective Order.....	12
F. Plaintiff's Motion for Class Certification	12
G. Defendants' Rule 23(f) Petition to the Ninth Circuit.....	15
H. Fact Discovery	15
1. Plaintiff's Document Discovery Directed to Defendants.....	15
a. Plaintiff's Document Discovery Directed to Defendant Banc	16
b. Plaintiff's Document Discovery Directed to Defendant Sugarman	16
2. Defendants' Document Discovery Directed to Iron Workers.....	17
3. Plaintiff's Document Discovery Directed to Relevant Nonparties.....	17
4. Plaintiff's Discovery Disputes with Defendants and Nonparties.....	19
a. The "Deposition Disputes" Briefing	19
b. Plaintiff's Motion to Compel Against WilmerHale	20
c. Plaintiff's Motion to Compel Documents from Nonparty Carlos Salas	21
d. The Production of Unredacted, Relevant KPMG Workpapers and Materials	21
5. Discovery Disputes Between Defendants and Between Sugarman and Certain Nonparties.....	22
6. Depositions	23

	Page
1	
2	
3	
4	I. Jason Galanis.....26
5	J. Plaintiff's Experts27
6	1. Zachary R. Nye, Ph.D.....27
7	2. Steven P. Feinstein, Ph.D., CFA.27
8	3. Harvey L. Pitt.....28
9	4. Craig Pirrong, Ph.D.29
10	5. Bjorn Steinholt, CFA.....29
11	K. In-House Forensic Accounting Department ..30
12	L. Settlement Negotiations and Terms31
13	III. NATURE AND ADEQUACY OF THE SETTLEMENT.....32
14	A. Strengths and Weaknesses of the Case33
15	1. Falsity and Materiality.....33
16	2. Scienter35
17	3. Loss Causation and Damages.....36
18	4. The Credibility of Jason Galanis38
19	B. The Settlement Is in the Best Interests of the Class and Warrants Approval.....39
20	C. The Plan of Allocation39
21	D. Reasonableness of Attorneys' Fees and Expenses41
22	
23	
24	
25	
26	
27	
28	

1 I, MATTHEW I. ALPERT, declare and state as follows:

2 1. I am an attorney duly licensed to practice before all of the courts of the
3 State of California, and I am admitted to practice before this Court. I am a member of
4 the firm of Robbins Geller Rudman & Dowd LLP (“Robbins Geller” or “Lead
5 Counsel”), counsel for Lead Plaintiff Iron Workers Local No. 25 Pension Fund
6 (“Plaintiff” or “Iron Workers”), and the Class. I have been actively involved in the
7 prosecution and resolution of this action, am familiar with its proceedings, and have
8 personal knowledge of the matters set forth herein based on my active supervision and
9 participation in all material aspects of the Litigation.

10 2. I submit this Declaration in support of Plaintiff’s motion, pursuant to
11 Rule 23 of the Federal Rules of Civil Procedure, for approval of: (a) the Stipulation of
12 Settlement dated October 28, 2019 (the “Stipulation”) (see ECF No. 592),¹ which
13 provides for a cash settlement of \$19,750,000 (the “Settlement Amount”); (b) the
14 proposed Plan of Allocation; (c) Lead Counsel’s application for an award of attorneys’
15 fees and expenses; and (d) award to Plaintiff pursuant to 15 U.S.C. §78u-4(a)(4) in
16 connection with its representation of the Class.

17 **I. PRELIMINARY STATEMENT**

18 3. This case has been zealously litigated for over two years. The basic
19 terms of the Settlement were finalized in September 2019, after the parties exchanged
20 expert reports and just before Defendants were scheduled to file their motions for
21 summary judgment.² Plaintiff aggressively litigated this case at every stage in the face
22 of Defendants’ vigorous opposition and denial of any liability.

23 4. The Settlement was achieved only after Lead Counsel had a full
24 appreciation of the strengths and weaknesses of its case. Indeed, Lead Counsel

26 ¹ Capitalized terms not otherwise defined in this Declaration have the same
27 meanings as set forth in the Stipulation.

28 ² Defendants are Banc of California, Inc. (“Banc” or the “Company”) and Steven A.
Sugarman (“Sugarman”) (collectively, the “Defendants”).

1 conducted an exhaustive factual investigation prior to the drafting of the Consolidated
2 Complaint for Violations of the Federal Securities Laws (the “Complaint”) (see ECF
3 No. 41)³ and successfully opposed Defendants’ motions to dismiss. *See* ECF No. 68.
4 Plaintiff and Lead Counsel successfully obtained class certification, wherein the Court
5 certified a class of Banc investors who purchased stock between April 15, 2016 and
6 January 20, 2017 (“Class Period”), and appointed Iron Workers to be Class
7 Representative and Robbins Geller to serve as Class Counsel. ECF No. 236. Lead
8 Counsel then successfully opposed Defendants’ Rule 23(f) petition.⁴

9 5. In addition, the factual record was fairly advanced as the parties engaged
10 in significant discovery. Plaintiff propounded numerous discovery requests upon both
11 Defendants and served (or attempted to serve) more than 60 nonparty document
12 subpoenas. Plaintiff also responded to numerous discovery requests served by each
13 Defendant. Lead Counsel traveled on multiple occasions to meet with Jason W.
14 Galanis (“Galanis”), who is currently an inmate at FCI Terminal Island in San Pedro,
15 California and whose alleged connections to Defendants formed the crux of the
16 Complaint’s allegations. Lead Counsel also deposed 17 fact witnesses including: (1)
17 the federally incarcerated Galanis; (2) Sugarman; (3) former Banc executives and
18 employees; (4) current and former members of Banc’s Board of Directors; (5) Banc’s
19 former General Counsel; (6) multiple 30(b)(6) representatives for the Company; (7)
20 two separate former outside counsels for Banc who represented the Company during
21 the Class Period; and (8) a former partner from Banc’s then-outside auditor KPMG
22 LLP. Defendants meanwhile deposed Iron Workers’ investment manager who
23 purchased Banc common stock on its behalf during the Class Period. In total, Lead
24 Counsel reviewed and analyzed more than 1.2 million pages of documents produced
25 by both Defendants and relevant nonparties which were electronically stored on Lead

26 _____
27 ³ All “¶” and “¶¶” references are to the Complaint.
28 ⁴ *See Garcia v. Banc of California, Inc.*, No. 18-80068, 2018 WL 4474393 (9th Cir.
Sept. 19, 2018) (“Banc Appeal”).

1 Counsel's in-house computer databases. This significant discovery is the result of
2 numerous and extensive telephonic and written meet and confers with Defendants and
3 relevant nonparties regarding the production of documents and scheduling of
4 depositions and, where necessary, the filing of motions with the Court.

5 6. The Settlement is the result of extensive arm's-length negotiations
6 between the parties, including two formal mediation sessions and subsequent vigorous
7 discussions. The first all-day mediation between the parties was on August 10, 2018
8 and was conducted by Robert H. Fairbank, the principal of Fairbank ADR and a
9 former civil litigator with over 40 years of experience. Despite follow-up discussions
10 with Mr. Fairbank, the parties were unable to reach a resolution.

11 7. Subsequently, after fact discovery closed and pursuant to this Court's
12 March 6, 2019 Order ("Moratorium Order") (see ECF No. 551) requiring the parties
13 to renew settlement discussions, the parties engaged the Honorable Layn R. Phillips
14 (Ret.) and Michelle Yoshida, both well-respected and highly experienced mediators.
15 The all-day mediation with Judge Phillips and Ms. Yoshida took place on June 21,
16 2019. After nearly three months of extensive settlement negotiations following the
17 June mediation session, the parties were ultimately able to reach a settlement.

18 8. The substantial discovery, motion practice, exchange of numerous
19 detailed expert reports, and trial preparation outlined herein informed Plaintiff that,
20 while its case had strengths, it also had weaknesses and risks, which had to be, and
21 were, conscientiously evaluated in determining what course of action was in the best
22 interests of the Class.

23 9. The gravamen of the Complaint's allegations is that, in violation of
24 §§10(b) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule
25 10b-5 promulgated thereunder by the U.S. Securities and Exchange Commission
26 ("SEC"), Defendants materially misled investors by omitting certain information from
27 Sugarman's biography included within Banc's April 15, 2016 Annual Proxy Statement
28 ("Proxy"). Specifically, Plaintiff alleged that the Proxy materially and misleadingly

1 omitted any discussion of the allegedly extensive connections between Galanis, a then-
2 indicted securities fraudster, and Banc's Chairman and CEO via Sugarman's COR-
3 related entities.⁵ Additionally, Plaintiff alleged that Defendants materially misled
4 investors again in October 2016 when Banc issued an admittedly inaccurate press
5 release in response to a *SeekingAlpha.com* blog (the "Blog") published on October 18,
6 2016. The Blog discussed the author's belief (based on publicly sourced documents)
7 that Galanis had wide-ranging ties to several executives and directors at Banc and there
8 was therefore a risk that Galanis controlled Banc through his dealings with Sugarman
9 and other officers and directors at the Company.

10 10. The Complaint also alleged that the truth about Galanis's purported ties
11 to Defendants was first partially revealed by the October 18, 2016 Blog. After its
12 publication, Banc's stock price dropped nearly 30% from a close of \$15.87 on
13 October 17, 2016 to a close of \$11.26 per share on October 18, 2016, on significant
14 volume of 17.2 million shares. Plaintiff further alleged that the final disclosure of
15 Defendants' alleged fraud was revealed to the public on January 23, 2017 when Banc
16 announced in a press release that its October 18, 2016 response to the Blog was
17 inaccurate, that the SEC had initiated an investigation into the Company over its
18 October 2016 press release and related statements, and that Sugarman had resigned as
19 Chairman and CEO. On this news, Banc shares fell \$1.50 per share, or nearly 10%, to
20 close on January 23, 2017 at \$14.65 per share.

21 11. In opting to settle the Litigation, Plaintiff and its counsel considered the
22 significant risks associated with proving the claims alleged in the Complaint. For
23 instance, whether the statement in Banc's April 2016 Proxy about Sugarman's COR
24 entities was either material or misleading and whether the Proxy should have
25 disclosed alleged ties between Galanis and Sugarman (through his COR companies)
26 was a vigorously contested issue between the parties. Defendants strenuously

27 5 These include COR Securities Holdings, Inc. ("CORSHI"), COR Capital LLC,
28 COR Advisors and COR Clearing LLC ("COR Clearing").

1 contended: (1) there were no ties between Galanis and Sugarman requiring disclosure
2 in Banc’s Proxy; (2) nothing about Sugarman’s COR entities within his Proxy
3 biography omitted material information that necessitated disclosure to investors; and
4 (3) since the author of the October 2016 Blog purportedly uncovered links between
5 Galanis-Sugarman based on publicly accessible information (some of which predated
6 the Proxy), the investing public must have already known about these alleged ties and
7 therefore could not have been materially misled by any non-disclosure by Defendants.

8 12. As to whether there were any ties between Sugarman and Galanis that
9 should have been publicly disclosed, Defendants pointed to the findings of two
10 internal investigations (one in late 2015 and the other in late 2016 through early 2017)
11 respectively led by the nationally recognized law firms Winston & Strawn LLP
12 (“Winston Strawn”) and Wilmer Cutler Pickering Hale and Dorr LLP
13 (“WilmerHale”). According to Defendants, both of these firms determined that there
14 were no links between Galanis and any officers or directors at Banc that were either
15 unlawful or required public disclosure. Furthermore, WilmerHale concluded in
16 January 2017 that it could find no evidence that Galanis controlled Banc (either
17 directly or through any of its officers or directors) – something that the October 2016
18 Blog claimed made Banc an investment risk as a result of alleged connections
19 between Galanis and high-ranking individuals at the Company.

20 13. Issues related to loss causation and damages were also hotly contested
21 throughout this case, from Defendants’ motions to dismiss, to Defendants’ motion for
22 reconsideration and/or certification for interlocutory appeal, class certification
23 (including Defendants’ Rule 23(f) petition to the Ninth Circuit), and on through to
24 substantive arguments raised in each side’s expert reports. Combined, Defendants
25 submitted reports from five different experts focusing on the elements of loss
26 causation and/or damages. The issue of Plaintiff’s burden to prove loss causation (and
27 whether that burden was met) would have also been a cornerstone defense for
28 Defendants at trial. Defendants would have taken the position, supported by expert

1 testimony, that neither the October 2016 nor the January 2017 drops in Banc’s stock
2 price could be attributed to the revelation of the alleged fraud and, therefore, the Class
3 suffered no legal damages. Defendants’ primary loss causation argument would have
4 centered around their “truth-on-the-market” contention that if the materials relied
5 upon (and cited to) in the October 2016 Blog were publicly accessible, the stock price
6 decline that followed its publication could not have been due to any purported
7 revelatory disclosure of new information. Defendants raised this argument at class
8 certification (*see* ECF No. 175), relying on the decision in *In re BofI Holding, Inc., Sec. Litig.*, 302 F. Supp. 3d 1128, 1140-1142 (S.D. Cal. 2018); a decision which is
9 currently pending before the Ninth Circuit. *See HMEPS v. BofI Holding, Inc.*, No. 18-
10 55415 (9th Cir.).⁶

12 14. Defendants would have also most likely argued that the January 2017
13 stock price decline was unrelated to any alleged connections between Galanis and
14 Sugarman, but was instead the result of Banc announcing, *inter alia*, that there was an
15 SEC investigation into Banc’s October 2016 response to the Blog and that Sugarman
16 resigned his Chairman and CEO position at the Company. Additionally, as articulated
17 in several of their experts’ reports, Defendants would have contended at both
18 summary judgment and trial that not only was the nearly 30% stock price decline
19 following the Blog’s publication in October 2016 not attributable to any revelation of
20 the alleged fraud, but that it was in fact the result of various forms of market
21 manipulation by a network of short sellers.

22 15. While Plaintiff disputes these contentions and would have done so at both
23 summary judgment and trial, there was a substantial risk of recovering limited or no
24 damages if, ultimately, the Court or jury agreed with Defendants’ loss causation/price

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⁶ In *BofI*, the court directly disagreed with this Court’s holding as to whether a short seller report relying on “publicly available” information can constitute a corrective disclosure for loss causation purposes. *See BofI*, 302 F. Supp. 3d at 1141.

1 impact arguments, or simply found that Plaintiff failed to carry its burden of proof at
2 trial.

3 16. The parties would also no doubt disagree on the importance, meaning,
4 and admissibility of witness testimony and many of the trial exhibits produced in the
5 Litigation. There was no way to predict which interpretations and inferences a jury
6 would accept. One of the key issues, especially for Plaintiff, was the sworn deposition
7 testimony (and, if possible, the potential trial testimony) of Galanis – who is currently
8 incarcerated at FCI Terminal Island after pleading guilty for his role in two distinct
9 multi-million dollar securities frauds.⁷ Defendant Banc noticed Galanis's deposition
10 in this case and, in January 2019 (less than a month before the close of fact discovery),
11 Galanis voluntarily agreed to provide up to 14 hours of testimony to accommodate
12 questioning by counsel for each Defendant and Plaintiff. And while Galanis took
13 responsibility for his role in the crimes that ultimately led to his incarceration, there
14 was a substantial risk that a jury would significantly discount the veracity of Galanis's
15 deposition and/or trial testimony because he is an admitted (and convicted) securities
16 fraudster. Additionally, the fact that Galanis was in prison for committing two multi-
17 million dollar securities frauds would almost assuredly have been a major point of
18 focus by Defendants if this case proceeded to trial.

19 17. In deciding to settle the Litigation, Plaintiff weighed the witness
20 testimony and documents it believed supported the allegations against the testimony
21 of other witnesses and documents that Defendants believed undercut those allegations.
22 All of these issues, and the risks attendant to them, were considered by Plaintiff and
23 its counsel in deciding to settle this Litigation on the agreed terms.

24
25 7 Galanis is currently being held at the Metropolitan Detention Center in Brooklyn,
26 New York, awaiting resentencing on both of the securities frauds to which he pled
27 guilty. As a result, had a trial in this Litigation started in February 2020 per the
28 Court's Moratorium Order (*see* ECF No. 551 at 2), Galanis would be outside of the
Central District of California and therefore in all likelihood unavailable for Plaintiff to
call as a live trial witness in support of its case in chief.

1 18. On balance, considering all the circumstances and risks faced at trial,
2 Plaintiff believes the Settlement is in the best interests of the Class.

3 19. Lead Counsel prosecuted the Litigation on a wholly contingent basis and
4 advanced or incurred all litigation expenses. By doing so, Lead Counsel shouldered
5 the substantial risk of an unfavorable result. Lead Counsel has not yet received any
6 compensation for its effort.

7 20. The fee application for 33% of the Settlement Amount is fair both to the
8 Class and Lead Counsel, and warrants the Court's approval. This fee request is within
9 the range of fee percentages frequently awarded in this type of action and, under the
10 particular facts of this case, is fully justified in light of the substantial benefits
11 conferred on the Class. The Settlement Amount accounts for approximately 25% of
12 reasonably recoverable damages. It also accounts for the risks undertaken by Lead
13 Counsel, the quality of representation, the nature and extent of legal services
14 performed, and the fact that the \$19.75 million Settlement was not likely at the outset
15 of the case. Both the Settlement and the fee request have been independently
16 approved by the Lead Plaintiff, Iron Workers. This is the kind of result envisioned by
17 Congress in enacting the Private Securities Litigation Reform Act of 1995, 15 U.S.C.
18 §78u-4, *et seq.* (the "PSLRA") and is entitled to significant weight by the Court in
19 awarding fees to counsel.

20 21. Lead Counsel also seeks an award of \$1,575,210.83 in expenses
21 reasonably and necessarily committed to the prosecution of the Litigation over the last
22 three years. These expenses include: (i) the substantial fees and expenses of
23 consultants and experts whose services Lead Counsel required for the successful
24 prosecution and resolution of this case; (ii) the costs associated with conducting fact
25 witness depositions, which included court reporter and videographer fees and travel
26 expenses; (iii) photocopying, imaging, shipping, and managing an electronic database
27 of more than 1.2 million pages of documents; and (iv) online factual and legal
28

1 research. These expenses were reasonable and necessary to obtain the successful
2 result.

3 22. Also, as permitted by the PSLRA, Lead Plaintiff Iron Workers seeks an
4 award of \$1,444 pursuant to 15 U.S.C. §78u-4(a)(4) for its representation of the Class.
5 Its investment of time, effort, and expense greatly contributed to the successful result
6 of the Litigation.

7 23. The following is a summary of the principal events which occurred
8 during the course of the Litigation and the legal services provided by Lead Counsel.

9 **II. THE LITIGATION**

10 **A. The Commencement of the Litigation**

11 24. On January 26, 2017, the initial class action complaint was filed in front
12 of the Honorable Judge Cormac J. Carney against Banc, Sugarman, and Banc's former
13 CFO, James J. McKinney ("McKinney"), alleging violations of the federal securities
14 laws on behalf of purchasers of Banc common stock during the period October 29,
15 2015 through January 20, 2017, inclusive. *See Malak v. Banc of California, Inc.*, No.
16 8:17-cv-00138-AG-DFM, ECF No. 1 (C.D. Cal.) ("Malak").

17 25. On March 24, 2017, Iron Workers moved to be appointed lead plaintiff
18 and for approval of its selection of Robbins Geller as lead counsel. *See Garcia v.*
19 *Banc of California, Inc.*, No. 8:17-cv-00118-CJC-DFM, (C.D. Cal.) ECF Nos. 15-19
20 ("Garcia").

21 26. On April 20, 2017, this case was transferred from Judge Carney to this
22 Court. *See Malak*, ECF No. 17.

23 27. On May 1, 2017, the Court appointed Iron Workers as lead plaintiff
24 pursuant to §21D(a)(3)(B) of the Exchange Act as amended by the PSLRA, approved
25 its selection of Robbins Geller as lead counsel and consolidated the *Malak* and *Garcia*
26 actions, captioning the case as *In re Banc of California Securities Litigation*. *See* ECF
27 No. 39.

28 28. On May 31, 2017, Plaintiff filed the Complaint. *See* ECF No. 41.

1 **B. Defendants' Motions to Dismiss**

2 29. On June 30, 2017, Defendants Banc, Sugarman, and McKinney each
3 filed their own motion to dismiss the Complaint. *See* ECF Nos. 42-53. Their detailed
4 and complex motions raised numerous legal issues and challenges to the sufficiency of
5 the Complaint's allegations. In sum, they argued that Plaintiff: (1) failed to
6 adequately allege any misleading statements or omissions; (2) failed to adequately
7 allege materiality; (3) failed to adequately allege scienter, including any allegations of
8 motive or opportunity to commit fraud, or strong circumstantial evidence of conscious
9 misbehavior or recklessness; (4) failed to adequately allege loss causation; and
10 (5) failed to meet the pleading requirements required for a §20(a) control person
11 claim. *See* ECF Nos. 42-44.

12 30. On July 21, 2017, Plaintiff filed its omnibus opposition to the motions to
13 dismiss filed by defendants Banc and Sugarman.⁸ Specifically, Plaintiff argued that
14 the Court should deny both motions because, *inter alia*, the Complaint sufficiently
15 alleged that: (1) Defendants' statements and omissions in Banc's Proxy with respect to
16 the biographies of Sugarman and former Banc director Chad T. Brownstein
17 ("Brownstein") were materially false and/or misleading; (2) Defendants' public
18 statements about Banc's "quality people," "top talent," and "strong independent
19 board" were materially misleading; (3) Defendants' purported risk disclosures about
20 Banc's reputation were materially misleading; (4) Banc's Class Period filings
21 referring to Brownstein as an "independent" director were materially misleading;
22 (5) Defendants made these public material misrepresentations with the requisite
23 fraudulent state of mind (*i.e.*, scienter); (6) both the October 18, 2016
24

25 ⁸ On July 24, 2017, the parties stipulated, and the Court agreed, that Plaintiff would
26 have until July 28, 2017 to respond to McKinney's motion to dismiss because Plaintiff
27 was trying to have all parties agree to McKinney's dismissal. ECF Nos. 57-58.
28 However, because Plaintiff could not obtain approval from all the parties to dismiss
McKinney with prejudice, Plaintiff filed its notice of dismissal with respect to the
former Banc CFO on July 26, 2017. ECF No. 59.

1 *SeekingAlpha.com* Blog and Banc’s January 23, 2017 press release were actionable
2 corrective disclosures for purposes of pleading the element of loss causation; and
3 (7) Defendants were “control persons” who violated §20(a) of the Exchange Act. *See*
4 ECF No. 55. In opposing Defendants’ motions to dismiss, Lead Counsel spent
5 significant time and resources performing the legal research necessary to demonstrate
6 that the Complaint satisfied the pleading requirements imposed by the PSLRA.

7 31. On August 4, 2017, Defendants filed replies in support of their respective
8 motions to dismiss. *See* ECF Nos. 60-61.

9 32. On September 6, 2017, the Court issued an order (“MTD Order”) that
10 partially denied Defendants’ motion to dismiss and holding that Plaintiff sufficiently
11 alleged: (1) that Sugarman’s biography within Banc’s April 2016 Proxy contained an
12 actionable material misrepresentation; (2) the material misrepresentation in Banc’s
13 Proxy was made by Defendants with scienter; and (3) that the October 2016 Blog and
14 Banc’s January 2017 press release were actionable corrective disclosures for the
15 purposes of establishing loss causation at the pleading stage. *See* ECF No. 68 at 10-17.⁹

16 **C. Defendants’ §1292(b) Motion**

17 33. On October 5, 2017, pursuant to 28 U.S.C. §1292(b), Defendants moved
18 the Court to amend its MTD Order and then certify it for immediate appeal on the
19 issues of whether: (1) the Blog, which relied on publicly accessible information, can
20 constitute a corrective disclosure for loss causation purposes; and (2) Sugarman’s
21 biography in Banc’s Proxy misleadingly omitted any material information about
22 alleged ties between the former Banc CEO and Galanis. *See* ECF No. 74.

23 34. On October 9, 2017, Plaintiff filed its opposition to Defendants’ §1292(b)
24 motion. *See* ECF No. 75. Plaintiff argued that Defendants were simply rehashing
25 arguments raised at the motion to dismiss stage, arguments this Court rejected when it
26 upheld the Complaint’s allegations about Sugarman’s Proxy biography. Plaintiff

27 9 Unless otherwise noted, the page number references are to the blue ECF numbers
28 at the top of each page.

1 further argued that Defendants failed to demonstrate any of the §1292(b) factors had
2 been met and, as a result, the Court should deny their request which is reserved only
3 for “exceptional” cases.

4 35. On November 3, 2017, Defendants filed a reply brief in support of their
5 §1292(b) motion. *See* ECF No. 81.

6 36. On November 20, 2017, the Court denied Defendants’ §1292(b) motion.
7 *See* ECF No. 86.

8 **D. Rule 26(f) Joint Case Management Report**

9 37. On October 2, 2017, after extensive telephonic and written
10 communications, the parties jointly submitted their Case Management Report,
11 pursuant to Fed. R. Civ. P. 26(f). *See* ECF No. 73.

12 38. On October 16, 2017, the Court entered its Scheduling Order and adopted
13 the dates and deadlines attached in an exhibit to the parties’ Case Management Report.
14 *See* ECF No. 79.

15 **E. Confidentiality and Protective Order**

16 39. On November 6, 2017, the parties jointly submitted a proposed
17 Confidentiality and Protective Order (“Confidentiality Order”) to the Court. *See* ECF
18 No. 82.

19 40. On November 13, 2017, the Court signed and entered the Confidentiality
20 Order. *See* ECF No. 83.

21 **F. Plaintiff’s Motion for Class Certification**

22 41. On December 21, 2017, Lead Plaintiff moved for class certification
23 pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3), and to appoint Iron Workers as Class
24 Representative and Robbins Geller as Class Counsel. *See* ECF Nos. 91-94. Because
25 the Court dismissed the Complaint’s allegations predating Banc’s publication of its
26 Proxy in 2016,¹⁰ Plaintiff moved to certify a class of Banc investors who purchased

27
28 ¹⁰ *See* ECF No. 68 at 10.

1 their shares between April 15, 2016 and January 20, 2017, inclusive. Attached to
2 Plaintiff's class certification briefing was the expert report of Zachary Nye, Ph.D.
3 *See* ECF. No. 93-3. Dr. Nye's report focused on the issue of market efficiency,
4 wherein he opined that based on his research and analysis, Banc's stock traded in an
5 efficient market during the Class Period.

6 42. On February 8, 2018, Defendants deposed Iron Workers' investment
7 manager who transacted in Banc stock on its behalf during the Class Period. The
8 deposition took place in Chicago, Illinois.

9 43. On February 12, 2018, Defendants filed their opposition to Plaintiff's
10 motion for class certification. *See* ECF Nos. 141-142. Defendants' opposition brief
11 attached an expert report from Alexander Aganin, Ph.D. *See* ECF No. 141-2. Relying
12 in part on Dr. Aganin's report, Defendants made a two-pronged attack as to why
13 individual issues of reliance predominated over common ones compelling the Court to
14 deny class certification under Rule 23(b)(3). Defendants claimed that because the
15 Blog cited to and relied upon information that had been publicly accessible since
16 before its October 18, 2016 publication, the subsequent 30% stock price decline could
17 not have been caused by the purported revelation of alleged ties between Galanis and
18 Banc's then-CEO, Sugarman. Alternatively, Defendants argued that if indeed Banc's
19 steep stock price decline on October 18, 2016 was the result of information allegedly
20 "revealed" by the Blog, then the market for Banc's stock could not have been efficient
21 because the publicly accessible information allegedly disclosed by the Blog would
22 have already been incorporated into Banc's stock price long before it was published
23 on October 18th. Defendants also argued that Plaintiff did not sufficiently
24 demonstrate that common issues regarding the element of damages predominated over
25 individual ones. Specifically, Defendants claimed that Dr. Nye did not explain how
26 the event study he utilized for market efficiency purposes could exclude confounding
27 information surrounding both alleged corrective disclosures pleaded in the Complaint,
28

1 *i.e.* October 18, 2016 and January 23, 2017, when calculating damages caused by
2 Defendants' allegedly fraudulent conduct.

3 44. On March 22, 2018, Plaintiff filed its reply brief in support of class
4 certification. *See* ECF Nos. 163-164. Along with its reply brief, Plaintiff filed a
5 rebuttal expert report by Dr. Nye addressing the issues raised by Defendants (and their
6 expert) as to both market efficiency and damages. *See* ECF No. 164-1. In response to
7 Defendants' opposition, Plaintiff countered that Defendants failed to rebut the fraud-
8 on-the-market presumption of reliance enunciated by the Supreme Court in *Basic, Inc.*
9 *v. Levinson*, 485 U.S. 224 (1988). Furthermore, Plaintiff argued that the issues raised
10 by Defendants as to whether the public was actually aware of the alleged ties between
11 Galanis and Sugarman and also whether Banc's stock price declines on October 18,
12 2016 and January 23, 2017 were proximately caused by public revelations of
13 Defendants' alleged fraudulent conduct or "confounding information," were nothing
14 more than arguments about materiality and loss causation – two elements of a §10(b)
15 action that are inappropriate to decide at class certification.

16 45. On April 3, 2018, Defendant Banc filed a Notice of Supplemental
17 Authority in Support of Opposition to Class Certification ("NSA"), citing to the
18 motion to dismiss decision in *BofI*, 302 F. Supp. 3d 1128. *See* ECF No. 175. Banc
19 argued that based on the decision and reasoning by the court in *BofI* on the issue of
20 loss causation, this Court should deny class certification under Rule 23(b)(3) because
21 a stock price decline cannot be attributed to the release of information that was already
22 technically publicly available or accessible.

23 46. On April 4, 2018, Plaintiff filed its response to Banc's NSA, highlighting
24 to the Court why the *BofI* decision was completely inapt to the issues being litigated in
25 this case at the class certification stage and that the decision there relied on arguments
26 and case law this Court had already rejected when it denied Defendants' motions to
27 dismiss and their §1292(b) motion. *See* ECF No. 176.

28

1 47. On April 4, 2018, Defendant Banc filed a Request for Leave to File
2 Rebuttal Expert Report (“RFL”), attaching another report by Dr. Aganin. *See* ECF
3 No. 177.

4 48. On April 5, 2018, Plaintiff filed its opposition to Banc’s RFL. *See* ECF
5 No. 178.

6 49. On May 31, 2018, the Court granted Plaintiff’s motion for class
7 certification under Rule 23(a) and 23(b)(3), appointed both Iron Workers as Class
8 Representative and Robbins Geller as Class Counsel. *See In re Banc of California*
9 *Sec. Litig.*, 326 F.R.D. 640 (C.D. Cal. 2018).

10 **G. Defendants’ Rule 23(f) Petition to the Ninth Circuit**

11 50. On June 14, 2018, Defendants filed their Rule 23(f) petition with the
12 Ninth Circuit, seeking permission to appeal this Court’s grant of class certification.
13 *See Banc Appeal*, ECF No. 1. In their petition, Defendants resurrected the identical
14 arguments they made in their opposition to class certification.

15 51. On June 25, 2018, Plaintiff filed its opposition to Defendants’ Rule 23(f)
16 petition. *See id.*, ECF No. 3.

17 52. On July 3, 2018, Defendants moved for leave to file a reply in support of
18 their Rule 23(f) petition. *See id.*, ECF No. 4.

19 53. On September 19, 2018, the Ninth Circuit denied Defendants’ Rule 23(f)
20 petition. *See id.*, ECF No. 5; *see also Banc Appeal*, 2018 WL 4474393, at *1.

21 **H. Fact Discovery**

22 **1. Plaintiff’s Document Discovery Directed to
23 Defendants**

24 54. Upon expiration of the PSLRA-mandated discovery stay, Plaintiff served
25 document requests (“RFPs”) and its first set of interrogatories (“Rogs”) on Defendants
26 on October 13, 2017.
27
28

a. Plaintiff's Document Discovery Directed to Defendant Banc

55. In addition to the October 13, 2017 RFPs served on both Defendants, Plaintiff served additional RFPs on Banc on November 13, 2017, December 15, 2017, March 16, 2018, July 2, 2018, July 10, 2018, October 12, 2018, October 29, 2018, November 6, 2018, November 12, 2018 and December 4, 2018. Plaintiff and Defendant Banc conducted several meet and confers and negotiations as to the appropriate scope of Banc’s search for and production of relevant documents and communications, including electronically-stored information (“ESI”). Ultimately, Plaintiff and Banc agreed on a set of search terms that the latter would run with respect to ESI on its servers. After subsequent meet and confers concerning Plaintiff’s later-served RFPs, the two parties agreed on the production by Banc of various hard copy documents as well. In response to Plaintiff’s document requests, Banc produced approximately 456,000 pages of documents.

56. Plaintiff also served its second and third sets of Rogs on Banc on January 12, 2018 and August 17, 2018, respectively. Finally, Plaintiff served its first and second sets of requests for admission (“RFAs”) on Banc on July 17, 2018 and August 17, 2018, respectively.

b. Plaintiff's Document Discovery Directed to Defendant Sugarman

57. With respect to Sugarman, Plaintiff served its additional document requests on March 16, 2018, June 1, 2018, and November 12, 2018. Plaintiff and Defendant Sugarman separately conducted numerous meet and confers and negotiations as to an appropriate set of search terms Sugarman would run in connection with his non-Banc email addresses. In total, Sugarman produced nearly 1,900 pages of documents in response to Plaintiff's document requests.

58. In addition, Plaintiff served RFAs on Sugarman on January 31, 2018, February 12, 2018, February 13, 2018, and July 12, 2018.

2. Defendants' Document Discovery Directed to Iron Workers

59. On December 15, 2017, Banc served its first set of RFPs and Rogs on Iron Workers. Banc later served an additional set of RFPs, its second set of Rogs, and its first set of RFAs on Iron Workers on November 12, 2018. Subsequent to Banc serving its second set of Rogs and first set of RFAs, Plaintiff and Banc had multiple meet and confers to discuss the sufficiency of Plaintiff's responses to these two sets of discovery requests. As a result of these discussions, Plaintiff agreed to amend and supplement its responses to these discovery requests served by Banc.

60. In response to Banc's RFPs, Iron Workers produced more than 3,300 pages of documents.

61. Sugarman served Iron Workers with RFPs on April 9, 2018 and December 14, 2018. Additionally, Sugarman served its first set of Rogs and RFAs on Iron Workers on December 14, 2018.

3. Plaintiff's Document Discovery Directed to Relevant Nonparties

62. Because of the nature of the underlying factual allegations in this case, obtaining documents from relevant nonparties was crucial to Lead Counsel's prosecution of this Litigation. For example, the central allegation in this case was that Sugarman, through his COR entities, had material and undisclosed connections to both Galanis and entities that Galanis influenced and/or controlled ("Galanis Entities") that were directly involved in a multi-million dollar criminal securities fraud known as the Tribal Bonds Scheme. *See ¶¶32-36, 38, 59(a), 72(a), 84.* Therefore, Sugarman's alleged non-Banc connections to non-Banc people and entities were particularly important.

63. As a result, Plaintiff subpoenaed a multitude of nonparties with potentially relevant information, including: (1) Sugarman's COR entities; (2) certain individuals who worked directly for or with Sugarman's COR entities; (3) persons who were ultimately prosecuted by the United States Department of Justice for their

1 involvement with Galanis in the Tribal Bonds Scheme; (4) certain companies, law
2 firms, and individuals allegedly tied to the Tribal Bonds Scheme through Galanis,
3 Galanis Entities and/or Jason Sugarman (Steven Sugarman's older brother, a former
4 member of Banc's advisory board and also a former paid consultant to a Banc
5 subsidiary);¹¹ (5) Jason Sugarman; and (6) a company Jason Sugarman co-founded
6 and ran, and whose email address domain the SEC contended he used to communicate
7 with Galanis and others involved in the Tribal Bonds Scheme.¹²

8 64. This case also involved two separate internal Banc investigations led by
9 Winston Strawn (in late 2015) and WilmerHale (in late 2016 and early 2017) into
10 alleged ties between Galanis and Banc officers and directors, including Steven
11 Sugarman. Thus, Plaintiff subpoenaed both of these law firms for materials they
12 produced or shared (e.g., via a presentation) with the SEC as part of the latter's
13 investigation into Banc stemming from the Company's admittedly inaccurate
14 October 18, 2016 press release responding to the allegations laid out in the Blog. And
15 because Banc's auditor, KPMG, was also involved in the WilmerHale-led
16 investigation and also sent a letter to Banc's chairman of the Company's Joint Audit
17 Committee on October 27, 2016, "raising concerns about allegations of 'inappropriate
18 relationships with nonparties' and 'potential undisclosed related party
19 relationships,'"¹³ Plaintiff subpoenaed KPMG for documents as well.

20 65. In total, Plaintiff successfully served 54 nonparty subpoenas, resulting in
21 the production of more than 92,000 pages of documents. Most of these documents
22 were produced only after numerous meet and confers between Lead Counsel and the
23

24

¹¹ See ¶¶33, 56. The SEC recently charged Jason Sugarman as a co-conspirator of
25 Galanis's in the Tribal Bonds Scheme. *See Securities and Exchange Commission v.*
26 *Jason Sugarman*, No. 1:19-cv-05998-WHP (S.D.N.Y.), ECF No. 6, ¶¶1-3.

¹² *See Sec. and Exchange Comm'n v. Archer*, No. 16cv3505, 2018 WL 3424449,
27 at *1 (S.D.N.Y. July 2, 2018).

¹³ *See* ECF No. 102 at 4:22-25.

1 counsel for each respective nonparty. This required extensive coordinated efforts and
2 expenditures of time and resources by Lead Counsel.

3 **4. Plaintiff's Discovery Disputes with Defendants and
Nonparties**

4 66. Plaintiff negotiated and, in some instances, briefed several complex
5 discovery disputes involving Defendants and relevant nonparties.

6 **a. The "Deposition Disputes" Briefing**

7 67. In September 2018, after numerous rounds of meet and confers, the
8 parties briefed for the Court several deposition-related disputes. *See* ECF Nos. 356-
9 359, 370-372. Specifically, with respect to Sugarman's deposition, Plaintiff and Banc
10 each sought up to seven hours (*i.e.*, up to 14 hours combined), and Sugarman refused
11 to be deposed for more than seven hours total. Similarly, with respect to the
12 deposition of Banc's former General Counsel (who was also designated by Banc as a
13 30(b)(6) representative), Plaintiff and Sugarman each sought up to seven hours, and
14 Banc refused to allow him to sit for more than seven hours combined as both an
15 individual and corporate designee.

16 68. As to the depositions of the Company's current and/or former directors,
17 Banc argued that Plaintiff and Sugarman together could only depose certain current
18 and/or former Company directors for up to two hours each and also that the areas of
19 inquiry be limited to certain topics. Finally, Plaintiff requested that the Court order
20 Banc to designate a corporate representative on certain topics, one of which was
21 Sugarman's resignation in January 2017.

22 69. In October 2018, the Court ruled that it would not deviate from the
23 presumptive limits under the Federal Rules of Civil Procedure and allowed Plaintiff to
24 depose Sugarman for up to seven hours, and if Banc wanted to depose Sugarman for
25 any more time, then they could seek leave of Court if that situation arose. *See*
26 *generally* ECF No. 374. The Court also ruled that Plaintiff and Sugarman could
27 depose the former and/or current Banc directors for up to seven hours each – with
28

1 Plaintiff and Sugarman dividing up the seven hours – and that Banc’s former General
2 Counsel could be deposed for up to fourteen hours total as both an individual and in
3 his capacity as a 30(b)(6) representative for Banc. *Id.*

4 70. Not surprisingly, this deposition briefing, along with the seemingly
5 endless meet and confers that preceded it, delayed Plaintiff's ability to depose both
6 named Defendants, Banc's former General Counsel, and certain current and/or Former
7 Banc Directors.

b. Plaintiff's Motion to Compel Against WilmerHale

10 71. In January and February 2018, Plaintiff, Defendants, and certain
11 nonparties participated in *omnibus* discovery briefing to address overarching
12 discovery disputes. *See* ECF Nos. 102-105, 111-133, 137-139. One dispute related to
13 disagreements Sugarman had with his co-Defendant Banc as well as certain nonparties
14 over the appropriate scope and sequencing of discovery. In addition, Plaintiff had a
15 dispute over whether Banc could invoke (or, in the alternative, had waived) the
16 attorney-client privilege and work product protections relating to internal
17 investigations conducted on Banc’s behalf by the law firms Winston Strawn and
18 WilmerHale. Banc and WilmerHale zealously argued that neither waived the
19 privilege or work product protections. Plaintiff argued that any applicable privilege
20 was waived as to findings made by either Winston Strawn or WilmerHale ultimately
21 disclosed to the SEC, including the factual information underlying those conclusions.
22 While the Court ruled on the scope of the discovery issues, it determined that ruling
on the privilege issue was premature at that juncture. *See* ECF No. 146.

72. Two weeks after the Court's order on February 14, 2018, Plaintiff participated in an in-person meet and confer with both Defendants and WilmerHale in Los Angeles. At that conference, Plaintiff and WilmerHale were able to largely agree on a narrowed scope of production. However, WilmerHale steadfastly asserted that attorney work product protection applied to the law firm's notes and memoranda of

1 interviews that it conducted of Banc officers, directors, and employees (including
2 Steven Sugarman). In May 2018, Plaintiff moved to compel the production of these
3 materials, which the Court granted. *See* ECF Nos. 194-195, 223.

4 **c. Plaintiff's Motion to Compel Documents from
Nonparty Carlos Salas**

5 73. In October 2017, Plaintiff served a subpoena on nonparty Carlos Salas,
6 requesting the production of several categories of documents (which included any
7 transcripts of testimony given by Salas to the SEC). Salas served as a chief executive
8 at two of Sugarman's COR entities – specifically COR Clearing LLC and CORSHI –
9 and for part of the Class Period, was Sugarman's Chief of Staff at Banc. In
10 October 2017, Plaintiff also served CORSHI with a subpoena to produce documents.
11 In February and April 2018, respectively, both CORSHI and Salas produced
12 documents in response to Plaintiff's subpoenas.

13 74. However, Plaintiff and Salas disagreed about whether Salas had ever
14 given testimony to the SEC related to topics relevant to this Litigation and, if he did,
15 whether he would produce any transcript of his testimony. Initially, Salas neither
16 confirmed nor denied that any hearing with the SEC took place. Eventually, after
17 multiple meet and confers, Salas informed Plaintiff that because he did not physically
18 possess his SEC hearing transcript, he could not produce it, nor would he order it from
19 the SEC and subsequently produce it to Plaintiff. Ultimately, Plaintiff had no choice
20 but to move to compel. *See* ECF Nos. 153-155. Salas filed an opposition (*see* ECF
21 No. 162), but before Plaintiff's reply brief was due, the parties had several discussions
22 and eventually agreed that Plaintiff would withdraw its motion if Salas agreed to
23 produce a redacted copy of his SEC transcript, blocking out portions irrelevant to this
24 litigation. *See* ECF No. 165.

25 **d. The Production of Unredacted, Relevant
KPMG Workpapers and Materials**

27 75. In October 2017, Plaintiff served a subpoena on nonparty KPMG, Banc's
28 former outside auditor. KPMG ultimately produced over 2,400 pages of documents;

1 however, at Banc’s direction, KPMG redacted information relating to WilmerHale’s
2 investigation, despite producing the same documents to the SEC with no redactions.
3 In August and September 2018, Plaintiff participated in extensive meet and confers
4 with both KPMG and Banc. Banc and its now-former auditor ultimately agreed to
5 allow Plaintiff to electronically review unredacted versions of certain KPMG
6 workpapers and, in November 2018, produced those requested documents.

7 76. Because Plaintiff needed these documents to effectively depose KPMG’s
8 former audit partner Christopher Brown (“Brown”), the individual who led the Banc
9 engagement and was involved in WilmerHale’s investigation on behalf of the
10 Company’s Special Committee, his deposition was delayed for several months.

11 **5. Discovery Disputes Between Defendants and Between
12 Sugarman and Certain Nonparties**

13 77. This Litigation also had a multitude of disputes arising out of document
14 and deposition-related discovery that Sugarman sought from Banc, WilmerHale,
15 certain current and former members of Banc’s Board of Directors and a former
16 employer of one of Banc’s former directors.¹⁴ When these discovery clashes
17 eventually reached the level of briefing, Plaintiff reviewed those Court filings and also
18 prepared for and attended hearings (either telephonically or in person) in case this
19 Court had any questions for Plaintiff as to its stance on the various disagreements
20 involving Sugarman and the nonparties. Plaintiff also reviewed the briefing, hearing
21 transcripts, and subsequent orders issued by Magistrate Judge Douglas F. McCormick

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¹⁴ See, e.g., ECF Nos. 144-145, 156-157, 161, 169-174, 190-192, 198-202, 205-206,
26 208-209, 211, 213, 215-218, 221-222, 229-230, 232, 242, 244-245, 250-254, 256-257,
27 259-268, 270-281, 283-285, 288, 290-292, 297, 300-303, 306-307, 309-310, 314, 323,
28 325, 328, 341, 345, 348-349, 358-362, 364-367, 371-373, 375-377, 379-390, 396-398,
575-580, 582-584.

1 regarding motions to compel Sugarman filed against several alleged short-sellers of
2 Banc stock during the Class Period.¹⁵

3 78. Plaintiff also carefully monitored the discovery disputes regarding Banc's
4 noticed depositions of: (1) Sugarman; (2) 30(b)(6) representatives for two of
5 Sugarman's COR-related entities; (3) Carlos Salas, a former executive at both
6 CORSHI and COR Clearing; and (4) Cynthia Abercrombie, a former director of a
7 wholly owned subsidiary of Banc. *See* ECF Nos. 487-488, 491, 494, 500-502, 528-
8 529, 536, 553, 556.

9 **6. Depositions**

10 79. In preparation for trial, Plaintiff took or participated in 17 fact
11 depositions that included Sugarman, the federally incarcerated Galanis, two 30(b)(6)
12 representatives for Banc, Banc's former General Counsel, current and former
13 members of Banc's Board, Banc's former Chief Accounting Officer, former outside
14 counsel for Banc and a former KPMG audit partner who worked on the Banc
15 engagement and was involved in the WilmerHale-led investigation on behalf of
16 Banc's Special Committee (a subsection of Banc's Board) in late 2016 and early 2017.

17 80. Additionally, as a result of the contentiousness of this Litigation, two
18 depositions needed to be continued at the Federal Courthouse in Santa Ana in front of
19 Magistrate Judge McCormick. *See* ECF Nos. 446-455, 461-464, 468-469 (briefing
20 between the Defendants regarding deposition of then-current Banc director Halle
21 Bennett); ECF Nos. 431-434, 436-437, 456-457, 473-479 (briefing between the
22 Defendants regarding deposition of Banc's former outside counsel, Sanford
23 Michelman). Another example of just how combative this Litigation would become,
24 after Plaintiff deposed Sugarman for seven hours over a span of two days in
25

26 ¹⁵ *See In re Subpoenas to Produce Documents Information, or Objects to Muddy
27 Waters Capital LLC, MLAF LP, and SS&C Technologies, Inc., No. 2:18-MC-00147
28 (C.D. Cal.); In re Banc of California Sec. Litig., Nos. 8:19-MC-00004 & 8:19-MC-00005 (C.D. Cal.).*

1 January 2019, Banc successfully moved to compel its co-defendant Sugarman to sit
2 for an additional seven hours – which he did in March and April 2019. *See* ECF Nos.
3 500-502, 514.

4 81. Lead Counsel noticed or participated in the depositions of the following
5 witnesses:

6 DEONENT	7 DATE(S)	8 LOCATION	9 POSITION DURING 10 CLASS PERIOD
11 Leo Harman	12 02/08/18	13 Chicago, Illinois	14 Plaintiff's Outside 15 Investment Manager
16 Tina Van der Zee	17 05/30/18	18 Los Angeles, 19 California	20 Banc Senior Vice 21 President/Account 22 Relationship Manager
23 Carlos Velasquez	24 06/21/18	25 Los Angeles, 26 California	27 Employee at both Banc & 28 Sugarman's COR Entities
29 Richard Smith	30 06/28/18	31 Los Angeles, 32 California	33 Banc Managing Director 34 of Private Banking
35 David Aronoff	36 08/09/18	37 Chicago, Illinois	38 Outside Counsel for Banc 39 (Winston Strawn)
40 Sanford 41 Michelman	42 11/28/18; 43 2/28/19	44 Los Angeles, 45 California; Santa 46 Ana, California (federal court house)	47 Outside Counsel for Banc 48 (Michelman & Robinson 49 LLP)
50 Eric Holoman	51 11/30/18	52 Los Angeles, 53 California	54 Banc Board & Special 55 Committee Member
56 Halle Bennett	57 12/06/18; 58 1/16/19	59 New York, New 60 York; Santa Ana, 61 California (federal 62 court house)	63 Banc Board & Special 64 Committee Member
65 Jonah Schnel	66 12/17/18	67 Los Angeles, 68 California	69 Banc Board & Special 70 Committee Member
72 John Grosvenor	73 12/19/18	74 Los Angeles, 75 California	76 Banc General Counsel
78 Albert Wang	79 01/04/19	80 New York, New 81 York	82 Banc Chief Accounting 83 Officer
85 Jeffrey Karish	86 01/15/19	87 Los Angeles, 88 California	89 Banc Board & Special 90 Committee Member

1 DEONENT	2 DATE(S)	3 LOCATION	4 POSITION DURING CLASS PERIOD
2 Jason Galanis	3 01/17/19- 01/18/19	4 San Pedro, California (FCI Terminal Island)	5 Federally Convicted Securities Fraudster With Alleged Material Ties to Sugarman and His COR Entities
5 Robert Sznewajs ¹⁶	6 01/23/19	7 Los Angeles, California	8 Banc Board & Special Committee Member
9 Steven Sugarman	10 01/24/19, 1/29/19, 03/05/19 & 04/18/19	11 Los Angeles, California	12 Banc CEO and Chairman
13 Christopher Brown	14 01/25/19	15 Irvine, California	16 KPMG Audit Partner
17 John Grosvenor ¹⁷	18 01/28/19	19 Los Angeles, California	20 Banc General Counsel

11 82. Several of these depositions were critically important in Lead Counsel's
 12 attempt to develop evidence necessary to establish that Defendants violated federal
 13 securities laws by allegedly failing to disclose in Banc's Proxy the purported material
 14 connections between the then-indicted Galanis and Sugarman's COR entities. Some
 15 of these depositions were also vital in exploring other areas related to Plaintiff's
 16 allegations, such as: (1) the late 2015 and early 2016 Winston Strawn-led internal
 17 investigation into alleged ties between Galanis and Banc's officers and directors
 18 (including Sugarman); (2) Banc's October 18, 2016 press release responding to the
 19 Blog which allegedly revealed those connections in a *SeekingAlpha.com* post that
 20 same day; (3) the late 2016 and early 2017 WilmerHale investigation (assisted by
 21 KPMG) on behalf of Banc's Special Committee into the veracity of certain assertions
 22 made by Banc in its October 2016 press release; (4) the circumstances surrounding
 23 and reasons behind Sugarman's resignation in January 2017; and (5) findings made by
 24 KPMG as a result of the WilmerHale investigation on topics that include the adequacy
 25 of Banc's internal controls and "tone at the top" issues.

26
 27¹⁶ Testifying as both a fact witness and a Banc 30(b)(6) representative.

28¹⁷ Testifying as a Banc 30(b)(6) representative.

1 **I. Jason Galanis**

2 83. One of the unique features of this Litigation is that the key allegations
3 revolved around whether a CEO of a publicly-traded company had material ties to a
4 then-indicted, and now federally incarcerated, securities fraudster. Thus, the two main
5 individuals that possessed information directly related to Plaintiff's allegations were
6 Sugarman (a named defendant), and Galanis, an inmate at FCI Terminal Island in San
7 Pedro, California.¹⁸ Plaintiff reached out to Galanis in January 2018 to gauge whether
8 he would be willing to discuss the Complaint's allegations and his alleged ties to
9 Banc, Sugarman, and Sugarman's COR entities. Galanis agreed, and subsequently
10 began communicating with Lead Counsel via email. After months of emailing back
11 and forth, Lead Counsel visited Galanis at FCI Terminal Island in the fall of 2018.
12 During their nearly all-day meeting, Lead Counsel and Galanis discussed the
13 underlying allegations in the Litigation and also reviewed various documents
14 produced in discovery that were either emails Galanis sent and/or received, or
15 documents he had signed.

16 84. In December 2018, Banc noticed Galanis's deposition to take place in
17 January 2019 at FCI Terminal Island. Galanis agreed to be deposed under oath for up
18 to 14 hours. The parties agreed to split the deposition time amongst themselves with
19 Banc and Plaintiff sharing seven hours, and Sugarman having up to seven hours to
20 question Galanis. *See* ECF Nos. 430, 435. Prior to his deposition, Lead Counsel met
21 with Galanis two more times, wherein they reviewed the Complaint's allegations and
22 discussed certain relevant materials produced in discovery that were documents or
23 communications Galanis had either previously sent, received, and/or signed. On
24 January 17 and 18, 2019, the parties deposed Galanis at FCI Terminal Island.

25
26

¹⁸ Plaintiff served document and deposition subpoenas on Hugh Dunkerley, a former
27 director of Sugarman's CORSHI entity and an admitted co-conspirator of Galanis's in
28 the Tribal Bonds Scheme, but Dunkerley refused to produce any documents or appear
for a deposition, invoking his right against self-incrimination pursuant to the Fifth
Amendment.

1 **J. Plaintiff's Experts**

2 85. To assist Lead Counsel in investigating and proving Plaintiff's claims
3 and navigating the complex issues involved in this matter, the services of certain
4 experts and in-house forensic accounting professionals were required.

5 **1. Zachary R. Nye, Ph.D.**

6 86. Dr. Zachary Nye is a financial economist and Vice President at Stanford
7 Consulting Group, Inc. He holds an A.B. in Economics from Princeton University; an
8 M.Sc. in Finance from the London Business School; and a Ph.D. in Finance from the
9 Paul Merage School of Business at the University of California, Irvine. His research
10 areas include the market efficiency of underlying and derivative securities, volatility
11 forecasting, risk management, financial econometrics, valuation, and corporate
12 finance. Dr. Nye has offered expert opinions and/or been deposed in numerous
13 securities fraud related actions. As this Court noted in its class certification opinion,
14 Dr. Nye's "resume and experience sufficiently establish his qualification as an expert
15 witness, which Defendants don't dispute." *Banc*, 326 F.R.D. at 648.

16 87. In connection with the motion for class certification, Plaintiff utilized the
17 services of Dr. Nye to examine and opine that Banc's stock traded in an efficient
18 market during the Class Period. In certifying the Class, the Court found that Plaintiff,
19 *via* Dr. Nye's report, sufficiently demonstrated that "many signs of an 'efficient
20 market'" were present and, as a result, common issues of reliance predominate over
21 individual ones. *Id.*; *see also id.* at 650 ("The Court finds Nye's event study sufficient
22 to show a causal relationship 'between unexpected corporate events or financial
23 releases and the price reaction of Banc of California stock,' which therefore also
24 favors a finding of market efficiency.").

25 **2. Steven P. Feinstein, Ph.D., CFA.**

26 88. Dr. Feinstein is currently an Associate Professor of Finance at Babson
27 College, and the founder and president of Crowninshield Financial Research, Inc., a
28 financial economics consulting firm. He holds a Ph.D. in Economics from Yale

1 University, a Master of Philosophy degree in Economics from Yale University, a
2 Master of Arts in Economics from Yale University, and a Bachelor of Arts degree in
3 Economics from Pomona College. Dr. Feinstein also possesses the Chartered
4 Financial Analyst designation, granted by the CFA Institute. Dr. Feinstein has
5 extensive experience in the financial industry, having been selected to review papers
6 for finance journals and having conducted analyses and presented opinions related to
7 markets, valuation, and damages in over 70 cases. *See generally Hsingching Hsu v.*
8 *Puma Biotechnology, Inc.*, No. SACV 15-00865 AG (JCGx), 2018 WL 4956520, at
9 *4-*5 (C.D. Cal. October 5, 2018) (denying defendants' motion to exclude
10 Dr. Feinstein).

11 89. Dr. Feinstein was retained by Plaintiff to provide an expert report on the
12 issue of loss causation and damages. Plaintiff submitted Dr. Feinstein's report (along
13 with attached exhibits and underlying documents) to Defendants when the parties
14 exchanged expert reports in February 2019 and rebuttal reports in May 2019.
15 Dr. Feinstein also submitted a supplemental rebuttal report in July 2019 in response to
16 a June 2019 rebuttal expert report submitted by Sugarman concerning loss causation
17 and damages.

18 **3. Harvey L. Pitt**

19 90. Mr. Pitt has a long and distinguished career, which first began at the SEC
20 and continued for over a decade, where he served as the SEC General Counsel for
21 three years before leaving and then returning to serve as the 26th Chairman of the
22 SEC from 2001-2003. Mr. Pitt was also a senior partner and Co-Chairman of Fried
23 Frank LLP for almost 25 years, and has also served as a fiduciary director to
24 numerous public and non-public companies, for-profit and nonprofit organizations,
25 and private sector and governmental advisory boards. Mr. Pitt also has extensive
26 teaching experience at a number of law schools.

27 91. Plaintiff retained Mr. Pitt to provide an expert report on issues pertaining
28 to the common practices and understandings surrounding full and fair public

1 disclosure by companies in the United States. Plaintiff submitted Mr. Pitt's report
2 (along with attached exhibits and underlying documents) to Defendants when the
3 parties exchanged expert reports in February 2019 and rebuttal reports in May 2019.

4 **4. Craig Pirrong, Ph.D.**

5 92. Dr. Pirrong is currently a Professor of Finance at the University of
6 Houston's Bauer College of Business. He holds both an undergraduate and Ph.D.
7 degree from the University of Chicago. Dr. Pirrong's research focuses on the
8 economics of commodity markets, the relation between market fundamentals and
9 commodity price dynamics, and the implications of this relation for the pricing of
10 commodity derivatives. Dr. Pirrong has also published extensively on the economics
11 of financial exchanges. He published 30 articles in professional publications and is
12 the author of three books. He has also served on the Commodity Futures Trading
13 Commission ("CFTC") Energy and Environment Markets Advisory Committee, and
14 has testified as an expert (for both plaintiffs and defendants) on a variety of
15 manipulation cases.

16 93. Banc and Sugarman each retained their own experts on loss causation
17 who opined that the fluctuation of Banc's stock price leading up to and following the
18 publication of the October 2016 Blog was caused by alleged market manipulation –
19 referred to as "spoofing" and "layering" – by a group of purported short sellers.
20 Plaintiff retained Dr. Pirrong to provide a rebuttal expert report to both of those
21 experts. Plaintiff exchanged Dr. Pirrong's expert report with Defendants in
22 May 2019.

23 **5. Bjorn Steinholt, CFA**

24 94. Mr. Steinholt is the managing director of Caliber Advisors, Inc., a full-
25 service financial valuation and economic consulting firm with offices in San Diego,
26 California and Chicago, Illinois. Mr. Steinholt has approximately 30 years of
27 experience providing capital markets consulting, including analyzing and valuing
28 investments and has provided expert reports and testified on issues such as market

1 efficiency, loss causation, and/or damages in numerous federal securities fraud cases
2 across the country.

3 95. Plaintiff retained Mr. Steinholt to consult in connection with both the
4 August 2018 and June 2019 mediations. Mr. Steinholt prepared event studies that
5 analyzed the movements in the price of Banc stock in comparison to the broader stock
6 market and prepared damages analyses for Lead Counsel. Mr. Steinholt and his team
7 spent time studying the record and public information regarding Banc, including
8 analyst reports and Banc's SEC filings, in order to be able to analyze the market in
9 which the Company's stock traded, disclosures related to Banc's finances and
10 operations, and the movements of Banc's stock in response to the disclosures and
11 events identified in the Complaint. Based on this work, Mr. Steinholt provided
12 Plaintiff with detailed information and analyses that were utilized in analyzing
13 damages, and provided support for Plaintiff's arguments at the August 2018 mediation
14 and the negotiations in connection with the June 2019 mediation session that
15 ultimately led to the Settlement.

16 **K. In-House Forensic Accounting Department**

17 96. Bradley Sader is a senior level Robbins Geller in-house forensic
18 accountant who worked on this Litigation. He is a Certified Public Accountant,
19 Certified Fraud Examiner, and has been designated by the AICPA as Certified in
20 Financial Forensics. Mr. Sader has over 16 years of professional experience, including
21 extensive experience in forensic accounting consulting in numerous complex litigation
22 matters as well as auditing at a national CPA firm. He is an active member of the
23 AICPA, the CalCPA, and the Association of Certified Fraud Examiners.

24 97. Mr. Sader provided analysis and input throughout the course of the
25 Litigation. For example, during the drafting of the Complaint, Mr. Sader researched
26 the public filings, discussed relevant facts and analysis with the attorneys, and
27 provided input during the Complaint drafting process. Then, in discovery, Mr. Sader
28 provided input on requesting documents from KPMG, and he closely reviewed the

1 KPMG workpapers as well as relevant Banc documents produced in the Litigation. In
2 addition, Mr. Sader helped the attorneys with their preparation for the deposition of
3 former KPMG audit partner Christopher Brown and attended the deposition with Lead
4 Counsel. Also, Mr. Sader participated in the preparation for the deposition of Albert
5 Wang, including selection of potential deposition exhibits and drafting of potential
6 questions to consider for the Wang deposition. Also, Mr. Sader participated in the
7 identification and selection of an expert witness in the Corporate Governance area,
8 which resulted in the hiring of expert witness, Harvey Pitt. Along with the attorneys,
9 Mr. Sader worked with Mr. Pitt in helping him understand the case. Mr. Sader
10 reviewed drafts of Mr. Pitt's expert reports and also reviewed final reports from
11 certain expert witnesses hired by defense counsel and provided feedback to the
12 attorneys concerning these expert reports.

13 **L. Settlement Negotiations and Terms**

14 98. The parties began settlement discussions in the fall of 2018. Initially, the
15 parties retained Mr. Fairbank of Fairbank ADR, a former civil litigator with over 40
16 years of experience. The parties attended an all-day mediation session with
17 Mr. Fairbank in August 2018 in Los Angeles. During that session, the parties gave
18 detailed and thoughtful presentations on the perceived strengths and weaknesses of
19 their respective cases. Although the mediation was confidential, it is fair to say that
20 all parties understood that the issues of falsity, materiality, scienter, and especially
21 loss causation and damages would all be hotly contested issues throughout the
22 Litigation. The parties were unable to reach a settlement at the conclusion of the
23 mediation with Mr. Fairbank; nor were they able to agree on settlement terms through
24 their respective follow-up discussions with Mr. Fairbank through the end of 2018 and
25 beginning of 2019.

26 99. After the close of fact discovery and pursuant to this Court's March 6,
27 2019 Moratorium Order instructing the parties to renew settlement discussions, the
28 parties engaged Judge Phillips and Ms. Yoshida, both well-respected and highly

1 experienced mediators, and participated in an all-day mediation with them on June 21,
2 2019 in New York City.

3 100. After nearly three months of extensive settlement negotiations following
4 the June mediation session, Judge Phillips made a proposal to the parties *via* email on
5 September 14, 2019 for an amount he believed should resolve the case. In the time
6 specified by Judge Phillips, the parties accepted the mediator's proposal to settle the
7 Litigation for \$19,750,000.

8 101. After reaching an agreement-in-principle, the parties worked diligently to
9 prepare preliminary approval papers and negotiate complex Stipulations with Banc
10 and Sugarman, respectively. The parties then advised the Court of the tentative
11 settlement on September 18, 2019 (*see* ECF Nos. 585, 587) and, on October 30, 2019,
12 Plaintiff filed the preliminary approval papers. *See* ECF Nos. 589-592.

13 102. On December 4, 2019, the Court issued an order preliminarily approving
14 the Settlement and the form and manner of notice to the Class. *See* ECF No. 595.

15 103. The Stipulation resolves the claims of the Class against all Defendants
16 and settles this Litigation for \$19,750,000 in cash, subject to the Court's approval.

17 104. The Settlement is the result of vigorous arm's-length negotiations. In
18 Lead Counsel's judgment, the compromise embodied in the Stipulation represents a
19 successful resolution of a very complex class action.

20 **III. NATURE AND ADEQUACY OF THE SETTLEMENT**

21 105. The Settlement was the product of vigorous, arm's-length negotiations
22 between the parties and, Lead Counsel believes, reflects the strengths and weaknesses
23 of the case. A settlement on the terms proposed would not have been achieved absent
24 the extensive efforts described above to plead and obtain the evidence necessary to
25 prove Plaintiff's claims of securities fraud. Nor would settlement have been achieved
26 without the substantial participation and assistance of strong mediators with extensive
27 experience in negotiating the resolution of complex actions of this type.

28

1 106. We believe that our reputation as attorneys who will zealously prosecute
2 a meritorious case through the trial and appellate levels, as well as our aggressive
3 litigation of this case, put us in a strong position in settlement negotiations with
4 Banc's insurance carriers.

5 107. Set forth below is an assessment of the strengths and weaknesses of the
6 case and the risks to recovery at trial, and a description of the significant terms of the
7 Settlement.

8 **A. Strengths and Weaknesses of the Case**

9 108. Although Plaintiff believes that its case is meritorious and that the Class
10 would ultimately prevail in establishing both liability and damages, it also understands
11 that a number of factors made the outcome of the trial uncertain. For instance, while
12 Plaintiff firmly believes that the documentary and testimonial evidence it intended to
13 offer at summary judgment and trial fully supports its claims, there is no way of
14 predicting which interpretations, inferences, or testimony the Court or jury would
15 accept. Further, Defendants have adamantly denied any culpability throughout the
16 Litigation and were prepared to mount aggressive defenses that could potentially bar a
17 Class recovery. If the Court at summary judgment (or a jury at trial) sided with
18 Defendants on even one of their defenses, the Class would recover nothing.
19 Defendants were prepared to aggressively challenge each and every element of
20 Plaintiff's case alleging violations of the federal securities laws.

21 **1. Falsity and Materiality**

22 109. The Complaint alleges that Defendants failed to disclose in Banc's Proxy,
23 specifically the section containing Sugarman's biography, that Sugarman's COR
24 entities had material connections to Galanis and entities controlled by Galanis that
25 were also involved in the Tribal Bonds Scheme. *See Banc*, 326 F.R.D. at 644. The
26 Complaint further alleges that when the alleged ties between Sugarman and Galanis
27 were purportedly revealed by the October 18, 2016 *SeekingAlpha.com* Blog, Banc's
28 stock price plummeted nearly 30%. *Id.* Additionally, the Complaint alleges that

1 Banc's stock dropped another 9% on January 23, 2017, when Banc publicly
2 announced that the SEC was investigating the Company regarding its press release
3 response to the Blog in addition to Sugarman's resignation as Banc's CEO and
4 Chairman. *Id.*

5 110. As Defendants made abundantly clear, especially during the discovery
6 process, it was their position that nothing about Sugarman's Proxy biography was
7 materially misleading. Defendants argued that there was nothing to disclose about
8 Galanis anywhere in the Proxy, and the fact that Sugarman's biography listed various
9 COR entities of his did not create a duty to disclose anything about Galanis.
10 Defendants further contended that Sugarman did not have any material connections to
11 Galanis at all, and to the extent that the two individuals may have known each other
12 and had friends or business associates in common, does not mean that Banc's Proxy
13 needed to disclose such immaterial information. *Cf. Sugarman et al. v. Muddy Waters*
14 *Capital LLC et al.*, No. 3:19-cv-04248-MMC (N.D. Cal.) ("Sugarman v. Muddy
15 Waters"), ECF No. 1, ¶44 ("In the conduct of his legitimate business affairs,
16 Mr. Sugarman was introduced to Galanis and had interactions with him prior to 2015.
17 However, at no time was Galanis ever an owner, officer, control person or employee
18 of any of Mr. Sugarman's businesses.").

19 111. Defendants would have also assuredly emphasized that neither Winston
20 Strawn nor WilmerHale found that Sugarman had any connections to Galanis that
21 required public disclosure. *See* ECF No. 131 at 5:18-20 ("Banc was aware of
22 [Sugarman's] historical interactions with Galanis, and two investigations determined
23 none of those 'ties' were material or otherwise needed to be disclosed."). Another
24 argument Defendants made in their motion to dismiss and class certification briefing,
25 as well as in their post-fact discovery cut off expert reports, was a "truth on the
26 market" defense. Defendants argued that if the author of the Blog relied on publicly
27 available information (some of it dated prior to the April 2016 Proxy) to allegedly link
28 Galanis and Sugarman in its October 18, 2016 *SeekingAlpha.com* publication, then the

1 market must have already been aware of any purported connections between the two
2 men, and therefore such information would have been immaterial by the time Proxy
3 and the Blog were published.

4 112. In an attempt to undercut Plaintiff's allegations as to both falsity and
5 materiality, Defendants would have probably sought to present evidence at trial of the
6 fact that, as Banc reported in a SEC Form 8-K filed on December 23, 2019, the SEC
7 staff informed Banc that "they have concluded the investigation as to the Company,
8 and they do not intend to recommend an enforcement action against the Company to
9 the Commission." Similarly, according to Sugarman, the SEC apparently informed
10 him "that there is no on-going investigation related to [him] and it does not intend to
11 pursue any claims against [Sugarman] for any actions related to Banc of California."
12 *Sugarman v. Muddy Waters*, ECF No. 85, ¶2. This too would be evidence that, at the
13 very least, Sugarman would seek to use at trial in order to convince a jury that the lack
14 of an SEC enforcement action – especially after it began an investigation into Banc
15 more than three years ago – significantly undermines the strength of Plaintiff's case
16 against him as well.

17 113. If the Court at summary judgment or a jury at the conclusion of a trial
18 found Defendants' arguments compelling, Plaintiff would have been hard-pressed to
19 prevail at trial.

20 **2. Scienter**

21 114. In addition to the very real risks Plaintiff faced establishing falsity,
22 Defendants were also prepared to mount a strong defense asserting that Plaintiff could
23 not establish that Defendants made any false or misleading statements with the
24 requisite intent. At minimum, Plaintiff was required to establish that Defendants were
25 reckless in issuing the material misstatements and/or omissions in Banc's Proxy.
26 Sugarman was prepared to argue that because he had no material connections to
27 Galanis, he could not have any scienter with respect to the allegedly misleading Banc
28 Proxy. Additionally, Sugarman argued that by the time Banc filed the Proxy in

1 April 2016, the Company and their attorneys had “received full disclosure from
2 Mr. Sugarman” and “were well aware of the purported Galanis ties,” and that “Banc’s
3 counsels decided the purported ties did not need to be disclosed in the 2016 [P]roxy or
4 otherwise.” ECF No. 131 at 7:3-6. Both Banc and Sugarman also argued that
5 documentary evidence and deposition testimony demonstrates that the latter’s
6 resignation in January 2017 was unrelated to the Proxy and its alleged failure to
7 disclose links between the former Banc CEO and Galanis. *See id.* at 5:15-18 (“Banc
8 and Mr. Sugarman . . . both agree Mr. Sugarman lacked scienter because . . . his
9 separation had nothing to do with the 2016 proxy statement, which was accurate in all
10 material respects.”).

11 115. As a result, Plaintiff faced the very real risk that the Court or the jury
12 could have accepted Defendants’ arguments that it had failed to establish the element
13 of scienter.

14 **3. Loss Causation and Damages**

15 116. Even if Plaintiff succeeded in proving liability, a major risk going
16 forward related to Plaintiff’s ability to prove loss causation and damages. To establish
17 these elements, Plaintiff would have to prove that the revelation of the alleged fraud
18 proximately caused the declines in Banc’s stock price during the Class Period and that
19 those fraud-related causes could be parsed out from any potential non-fraud related
20 news or publicly released information. Plaintiff believed that it would bring forth
21 sufficient evidence to support both the finding of loss causation and damages at
22 summary judgment and trial.

23 117. However, Defendants – as they did on multiple occasions in connection
24 with the motions to dismiss, their §1292(b) motion and their opposition to class
25 certification (including their 23(f) petition to the Ninth Circuit) – would argue (with
26 the help of three reputable experts) that Plaintiff cannot demonstrate that Banc stock
27 price declines during the Class Period were due (even in part) to the revelation of the
28 alleged fraud.

1 118. As demonstrated by their previous briefs and post-fact discovery expert
2 reports, Defendants' attacks on Plaintiff's theory of loss causation and damages at
3 summary judgment and trial would take multiple forms. The first is a corollary to the
4 "truth on the market" defense regarding materiality. Defendants argued that the
5 decline in Banc's stock price following the publication of the Blog on October 18,
6 2016 must have been related to something else because the author of the Blog
7 admittedly relied on publicly available information. Therefore, according to
8 Defendants, anything purportedly "disclosed" by the Blog was not new, and could not
9 have proximately caused the nearly 30% stock price drop.

10 119. Defendants' second argument would be based on documentary evidence
11 and their expert analysis that leading up to and following the publication of the
12 October 18, 2016 Blog, short sellers were manipulating the price of Banc's stock
13 through various unlawful tactics referred to as "spoofing" or "layering." *See Sec. and*
14 *Exchange Comm'n v. Lek Sec. Corp.*, 276 F. Supp. 3d 49, 60 (S.D.N.Y. 2017) ("The
15 SEC has consistently found layering and spoofing activity to violate §10(b) and Rule
16 10b-5."). Such trade practices are defined to be consisting of "bidding or offering with
17 the intent to cancel the bid or offer before execution." *United States v. Coscia*, 866 F.3d
18 782, 786-87 (7th Cir. 2017). Defendants' assertions that a group of short sellers
19 manipulated the price of Banc's stock and did so, at least in part, through publishing the
20 Blog, if supported with sufficient evidence, could convince the Court to grant summary
21 judgment in favor of Defendants or influence a jury to find that Plaintiff has
22 insufficiently proven loss causation and damages.

23 120. A third argument Defendants would have certainly made as to loss
24 causation and damages would have revolved around Banc's January 23, 2017 press
25 release announcing the SEC's investigation into the Company's October 2018 public
26 response to the Blog as well as Sugarman's resignation as Chairman and CEO. As to
27 this partial corrective disclosure alleged by Plaintiff, Defendants would have argued
28 that neither the announcement of the SEC investigation nor of Sugarman's resignation

1 was related to the Complaint's allegations that Galanis had material, undisclosed ties
2 to the former Banc CEO and his COR entities.

3 121. Because the determination of loss causation and damages is a
4 complicated process requiring expert testimony, compounding the above factors was a
5 risk that the Court would grant, in whole or in part, Defendants' motion(s) to exclude
6 the opinion and testimony of Plaintiff's loss causation and damages expert (or
7 Dr. Pirrong, Plaintiff's rebuttal expert on the issues of market manipulation) at trial.
8 Even if Plaintiff's experts survived Defendants' *Daubert* motion, however, the loss
9 causation and damage assessments of the parties' experts at trial could vary
10 substantially, reducing this crucial element to a "battle of experts."

11 122. In short, the parties disagreed on the merits of this case, including
12 whether or not damages were suffered and recoverable. Defendants deny that they are
13 liable in any respect or that Plaintiff or the Class suffered any injury. Accordingly,
14 recovery of any amount at trial was far from certain. One cannot predict which
15 expert's testimony or methodology a jury would find reliable. If the jury agreed with
16 Defendants and rejected Plaintiff's expert's calculations to apportion October 2016
17 and/or January 2017 stock price declines, Plaintiff would have had its damages
18 significantly reduced or its claims fail as a matter of law.

19 **4. The Credibility of Jason Galanis**

20 123. Had this case proceeded to summary judgment and trial, the testimony of
21 the currently incarcerated Jason Galanis would have been a primary piece of evidence
22 upon which Plaintiff would have relied. While Plaintiff believes Galanis gave
23 truthful, sworn testimony during his more than seven hour deposition, there is no
24 question that relying on the testimony of someone who has pled guilty to two
25 multi-million dollar securities frauds is fraught with risks. Defendants would certainly
26 attempt to impeach the credibility of Galanis's deposition (or live) testimony at trial
27 based primarily on the fact that he is in prison after pleading guilty to federal
28 securities fraud. In fact, Sugarman's federal lawsuit in *Sugarman v. Muddy Waters*,

1 where Galanis is a named defendant, demonstrates that it would have been a forgone
2 conclusion that Galanis's credibility and incarcerated status would take center stage at
3 trial. And, assuming Defendants did attack the veracity of Galanis's testimony based
4 on his admitted criminal history, there would be a very real risk that the jury would
5 give little or no weight to his testimony. As a result, if the jury found that Galanis was
6 not a credible witness, it could concurrently find that Plaintiff's remaining evidence is
7 insufficient to prove that Defendants committed securities fraud against Banc
8 investors.

9 **B. The Settlement Is in the Best Interests of the Class and
Warrants Approval**

10 124. Lead Plaintiff believes that it would have prevailed on the merits at trial.
11 Defendants were just as adamant that Plaintiff would fail. There was a very real risk
12 that Plaintiff would not have convinced a jury that Defendants acted with scienter or
13 that the alleged misrepresentations and omissions were materially false or misleading
14 when made. And there was a substantial risk that even assuming Plaintiff could prove
15 liability, the jury could be convinced by Defendants' experts that most of the stock
16 price declines were related to market or industry factors and not fraud – thereby
17 significantly reducing damages, or eliminating them altogether.
18

19 125. Having considered the foregoing, and evaluating Defendants' defenses, it
20 is the informed judgment of Lead Counsel, based on all proceedings to date and its
21 extensive experience in litigating class actions under the federal securities laws, that
22 the Settlement is fair, reasonable and adequate, and in the best interests of the Class.
23

24 **C. The Plan of Allocation**

25 126. The Net Settlement Fund will be distributed to Class Members who, in
26 accordance with the terms of the Stipulation, are entitled to a distribution and who
27 submit a valid and timely Proof of Claim and Release form. The Plan of Allocation
28 ("Plan") provides that a Class Member will be eligible to participate in the distribution
29

1 of the Net Settlement Fund only if the Class Member has a market loss on all of his,
2 her, or its transactions in Banc common stock during the Class Period.

3 127. Based on counsel's and their consultant's analysis, the Plan incorporates
4 an estimate of the amount of fraud-related inflation in Banc's common stock at
5 various times during the Class Period.

6 128. The amount of inflation in Banc stock after each of these events was
7 determined based on an event analysis examining the movement of Banc's stock price
8 compared to the overall market and an industry peer group following the event.

9 Events that were alleged to have misled investors, such as the April 15, 2016 Proxy
10 and Banc's October 18, 2016 admittedly inaccurate press release responding to the
11 Blog, increased or maintained the amount of inflation. On the other hand, the
12 October 18, 2016 Blog and January 23, 2017 announcement of the SEC investigation
13 and Sugarman's resignation, which were alleged to have disclosed the underlying
14 falsity and/or misleading nature of the fraud, decreased the amount of inflation.

15 129. The Plan apportions recognized losses to Class Members who retained
16 their Banc shares at the end of January 23, 2017, based on the amount of inflation on
17 the date they purchased their shares, *i.e.*, the amount they overpaid for their shares,
18 limited by the statutory 90-day bounceback rule. Shares sold prior to the October 18,
19 2016 partial disclosure of the alleged truth suffered no recognized losses, and are
20 therefore not eligible to receive a recovery. Recovery for all Class Members is limited
21 to their actual out-of-pocket losses.

22 130. Based on Lead Counsel's experience in this and other securities actions,
23 and their understanding of the factual circumstances giving rise to this Litigation and
24 the risks at trial, including the risks to both liability and damages, Lead Counsel
25 believes that the Plan provides a fair, reasonable, and adequate method of
26 apportioning the Net Settlement Fund among Authorized Claimants.

27

28

1 **D. Reasonableness of Attorneys' Fees and Expenses**

2 131. The successful prosecution of this Litigation required Lead Counsel and
3 their para-professionals to perform 11,049 hours of work valued at \$7,561,131.30 and
4 incur \$1,575,210.83 in expenses, as detailed in the accompanying Declaration of
5 Laurie L. Largent Filed on Behalf of Robbins Geller Rudman & Dowd LLP in
6 Support of Attorneys' Fees and Expenses ("RGRD Decl."). *See* RGRD Decl., ¶¶4-5.

7 132. Based on the extensive efforts on behalf of the Class, as described above,
8 Lead Counsel is applying for compensation from the Settlement Fund on a percentage
9 basis, and has requested a fee in the amount of 33% of the Settlement Amount. In
10 light of the difficult nature and extent of the Litigation, the diligent prosecution of the
11 Litigation, the complexity of the factual and legal issues presented, the risk of non-
12 payment undertaken by Lead Counsel, and the other factors described above and in
13 the accompanying motion for an award of attorneys' fees, Lead Plaintiff Iron Workers
14 and Lead Counsel believe that the requested fee of 33% of the Settlement Amount is
15 fair and reasonable. Moreover, it represents a significant ***negative*** multiple of
16 counsel's lodestar.

17 133. A 33% fee award is justified by the specific facts and circumstances in
18 this case and the substantial risks that Plaintiff had to overcome at the pleadings, class
19 certification, discovery, and appeal phases of the Litigation, and to prepare to
20 overcome at summary judgment and trial, as set forth herein. The \$19.75 million cash
21 settlement was achieved as a result of extensive and creative prosecutorial efforts,
22 contentious and complicated motions, over a year of hard-fought discovery, analysis
23 of voluminous evidence, and ultimately the initial stages for trial preparation, as
24 detailed herein. Importantly, the fee request has been approved by Lead Plaintiff.

25 134. This Litigation was prosecuted by Lead Counsel on an "at-risk"
26 contingent-fee basis. Lead Counsel fully assumed the risk of an unsuccessful result.
27 It has received no compensation for its services during the course of this Litigation
28 and has incurred significant expenses in litigating for the benefit of the Class.

1 Because the fee to be awarded in this matter is entirely contingent, the only certainty
2 from the outset was that there would be no fee without a successful result, and that
3 such a result would be realized only after a lengthy and difficult effort.

4 135. This Litigation could not have been successfully prosecuted without the
5 substantial participation and assistance of the Lead Plaintiff Iron Workers, which
6 expended time monitoring the Litigation, consulting with Lead Counsel regarding
7 case developments and prospects for settlement, and participating in discovery to
8 demonstrate the typicality of its claims, the adequacy of its representation, and the
9 suitability of this case for litigation on a class-wide basis. The time spent by Lead
10 Plaintiff in doing so, as reflected in the accompanying declaration of Iron Workers
11 submitted contemporaneously herewith, was reasonable and necessary to the
12 prosecution of this case. As such, Iron Workers' request for \$1,444 pursuant to
13 15 U.S.C. §78u-4(a)(4) in connection with its representation of the Class is reasonable
14 and should be granted.

15 I declare under penalty of perjury that the foregoing is true and correct.
16 Executed this 10th day of February, 2020, at San Diego, California.

s/ Matthew I. Alpert
MATTHEW I. ALPERT

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on February 10, 2020, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ MATTHEW I. ALPERT
MATTHEW I. ALPERT

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The following are those who are currently on the list to receive e-mail notices for this case.

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